Suite 506 City Hall Atlantic City, New Jersey 08401-4603 TEL 609.347.5404 FAX 609.347.5345 bwoolley-dillon@cityofatlanticcity.org



Barbara Allen Woolley-Dillon, PP, AICP Director of Planning & Development

# **MEMORANDUM**

**TO:** Chairman & Members of the Atlantic City Zoning Board of Adjustment

FROM: Barbara Allen Woolley-Dillon, PP, AICP, Director of Planning & Development

**DATE:** July 12, 2021

RE: Review of an Application for Appeal of the Decision of the Zoning Official, Interpretation, and/

or Use Variance Relief Hansen House, LLC

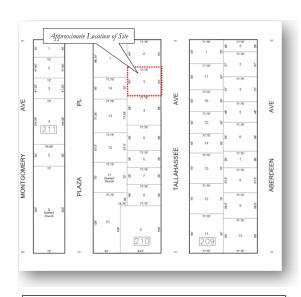
Project Location – 16 S. Tallahassee Avenue (Block 210, Lot(s) 3)

R-2 Single-Family Detached Residential (R-2) Zoning District

# Background:

The site is occupied by a detached single-family dwelling and a garage. The dwelling was constructed in 1920. It contains approximately 3,614 square feet of living space. The structure appears to be a four (4) story dwelling with a portion of the building constructed below grade (basement area).





Map Showing Location of Site

Source: <a href="https://nipropertyrecords.com/tax-map">https://nipropertyrecords.com/tax-map</a> (6/28/21) *n.t.s.* 

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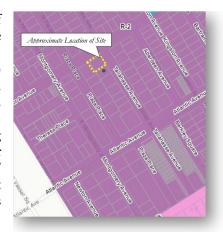
The following materials have been submitted to this office for review:

- Correspondence from Keith Davis, Esquire of Nehmad, Davis & Goldstein, dated January 27, 2021.
- Correspondence from Keith Davis, Esquire of Nehmad, Davis & Goldstein, dated February 22, 2021.
- Correspondence from Keith Davis, Esquire of Nehmad, Davis & Goldstein, dated December 23, 2020 seeking a Certificate of Land Use Compliance (Zoning Permit). This letter contains several attachments including but not limited to a copy of a Verified Complaint filed by The Hansen Foundation, Inc. on September 26, 2019, Correspondence from the NJDCA dated October 31, 2019 addressed to Hansen House, and a copy of a License to operate a Cooperative Sober Living Residence (Facility # 0102-0298) issued on November 12, 2019 and valid through October 31, 2020.
- Correspondence issued by Clinton Walden, the Zoning Official for Atlantic City, dated January 8, 2021, indicating a denial of a Certificate of Land Use Compliance (Zoning Permit) which was submitted on December 23, 2020.
- Opinion of Judge Noel L. Hillman, U.S.D.J. in the matter of The Hansen Foundation, Inc. v. City of Atlantic City, No. 1:19-CV-18608-NLH-AMD
- Completed Zoning Board Application.
- Copy of a License to operate a Cooperative Sober Living Residence (Facility # 0102-0298) issued on December 7, 2020 and valid through October 31, 2021, limiting the number of occupants to ten (10) persons.
- As Built Architectural plans prepared by Harry S. Harper, Architect & Planner, dated August 22, 2019 containing no revisions, and consisting of two (2) pages of floor plans.
- A Survey prepared by Adams, Rehmann & Heggan Associates, Inc., dated August 29, 2019, containing no revisions, and consisting of one (1) page.
- Colored photograph depicting a portion of the existing dwelling, garage, and other site improvements, containing no date.

#### Project Location & Description:

The site is in the R-2 zoning district. It is located on the northwestern side of Tallahassee Avenue, approximately sixty-four feet (64') southeast of the intersection of Ventnor Avenue. The site has approximately sixty-four feet (64') of frontage along Tallahassee Avenue. It has just under seventy-eight feet (77.75') feet of lot depth. The site is approximately 4,976 square feet or 0.1142 acres in size. There also appears to be a garage and concrete driveway located on the site.

The applicant is seeking an appeal of a decision from the Zoning Official denying a Certificate of Land Use Compliance (Zoning Permit), an interpretation, and/or a Use Variance for the property. The applicant has been operating a "Class F Boarding License" as a Clean and Sober Living Residence at this site without first obtaining a Zoning Permit. The proposed application indicates the applicant's desire to continue to operate this facility at this location.



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### Completeness Review:

The application has been deemed to be administratively complete as of April 28, 2021, due to the submission of the application and mandatory deadlines in which an application must be reviewed for administrative completeness. Please note that there appear to be several significant items that are still required for the Board and its professionals to have adequate information to review and render a decision on this application. These items are listed below. They include:

# Checklist for Variance Relief Approval (§ 163-70 A):

•	§ 163-70 A (8) (b)	Number and size of dwelling units, by number of bedrooms.
•	§ 163-70 A (8) (c)	Minimum yard dimensions and where relevant relation of yard dimensions to the
		height of any building or structure.
•	§ 163-70 A (8) (d)	The dimensions of all driveways, and the total lot coverage of all parking and driveway
		areas.
•	§ 163-70 A (8) (f)	Location, designation, and total area of all usable open space.
•	§ 163-70 A (8) (g)	Location, use, and site of structures and other land uses located within 200 feet of the
		boundaries of the site.
•	§ 163-70 A (14)	Other information and documentation deemed necessary or appropriate.

Please note that the applicant has subsequently requested waivers from all the checklist items listed above. This office does not recommend granting the requested waivers for most of the checklist items due the type of information that is required. Please refer to the comments listed below.

# Checklist Comments:

- 1. In accordance with the § 163-170 A (8) (b), the applicant should provide information for the height in stories and feet for the building ... and the number and size of dwelling units, by number of bedrooms. Due to the ceilings of the bedrooms in the upper level being peaked (sloped), pursuant to the Uniform Construction Code ("UCC"), the habitable space in the bedrooms is measured at five feet (5') above the finished floor. The plans submitted measure the habitable space at seven feet (7') above the finished floor for the upper floors. Since the ceilings are sloped, the habitable space of the bedrooms on the upper level of the structure will be different once the correct measurements are provided. Please provide updated measurements of the habitable space for the bedrooms on the upper level measured at five feet (5') above the finished floor so that the Zoning Board can determine the number of individuals that can safely occupy the structure.
- 2. In accordance with § 163-170 A (8) (c), the applicant shall provide minimum yard dimensions and where relevant, the relation of yard dimensions to the height of any building or structure. Information has not been provided for the height of the structure and the sethack to the overhang on the northern side of the property. It is unclear if additional variance relief is required for existing non-conforming conditions.
- 3. In accordance with § 163-170 A (8) (d), the applicant shall provide the dimensions of all driveways, and the total lot coverage of all parking and driveway areas. A Survey has recently been submitted, but this information is not included on the Survey. Considering the number of individuals proposed to reside at the property, information relating to parking is necessary to the Zoning Board's review of the variance application.

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- 4. In accordance with § 163-170 A (8) (f), the applicant is required to provide the location, designation, and total area of all usable open space. This information has not been provided. It is recommended that a waiver from this item be granted.
- 5. In accordance with § 163-170 A (8) (g), the applicant is required to provide the location, use, and size of structures and other land uses located within 200 feet of the boundaries of this site. This information has not been provided. It is recommended that a waiver from this item be granted.
- 6. In accordance with § 163-70 A (14), the applicant is required to provide other information and documentation as the Board of Adjustment may deem necessary or appropriate to a full and proper consideration and disposition of the particular application. This office has repeatedly sought information as to the exact nature of the proposed operation. Based on Hansen House's licensure as a Cooperative Sober Living Residence, please confirm if the specific use of the property will be as a "Class F Rooming House" and that the number of residents living at the property will be capped at 10, exclusive of the owner and/or operator.

Other than where noted, the information required in checklist items should be provided to the City as a condition of any approval that this Board might grant.

# Zoning Requirements for the Residential (R-2) Zoning District:

The zoning requirements included below are for a detached single-family dwelling unit.

Item	Standard	Existing	Proposed	Compliance
Minimum Required Lot Area*	3,000 sq. ft.	4,976 sq. ft.	4,976 sq. ft.	Complies
Minimum Required Lot Area/	3,000 sq. ft.	4,976 sq. ft.	4,976 sq. ft.	Complies
Minimum Lot Depth	N/A	77.75 ft.	77.75 ft.	Complies
Minimum Lot Width*	40 ft.	64 ft.	64 ft.	Complies
Minimum Yard Requirements				
Front Yard	15 ft.	5.3 ft.	5.3 ft.	ENC
Side Yard for each yard	5 ft./ 12 ft.	<i>3.7 ft.</i> /13.6 ft.	<i>3.7 ft.</i> /13.6 ft	ENC
Rear Yard	25 ft.	3 ft.	3 ft.	ENC
Maximum Lot Coverage			-	
Principal	35%	> 35%	> 35%	ENC
Accessory	7%	TBD	TBD	TBD
Aggregate	40%	> 40%	> 40%	ENC
Maximum Permitted Building Height				
Principal Structure	35 ft.	TBD	TBD	TBD
Accessory Structure	15 ft.	TBD	TBD	TBD
Maximum Density	14.52 du/ac	8.75 du/ac	8.75 du/ ac	Complies
Min. Off-Street Parking Spaces/ Unit**	2 spaces	TBD	TBD	TBD

DNC = Does Not Comply

ENC = Existing Non-Conforming

N/A = Not Applicable

TBD = To Be Determined

<sup>\*</sup> Minimum requirement for a detached single-family dwelling.

<sup>\*\*</sup>Parking standards are based on the Residential Site Improvement Standards (RSIS). No information has been provided on the number of bedrooms contained in the dwelling.

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All other aspects of zoning must comply at the time of the issuance of building permits.

# Variance Relief Required:

- Use Not Permitted
- Minimum Required Front Yard Setback Existing Non-Conforming Condition
- Minimum Required Individual Side Yard Setback Existing Non-Conforming Condition
- Minimum Required Rear Yard Setback Existing Non-Conforming Condition
- Maximum Permitted Lot Coverage for a Principal Building Existing Non-Conforming Condition
- Maximum Permitted Total (Aggregate) Lot Coverage Existing Non-Conforming Condition

All the variances requested by the applicant, except for the Use Variance will require deviation from the requirements pursuant to § NJSA 40:55D-70 c. In requesting variance relief, the applicant must demonstrate both the purposes of zoning and negative criteria that will result from deviation from the City's Zone Plan and Zoning Ordinance for each of the requested variances.

<u>Use Variance Relief</u> – In accordance with § 163-55 B and as featured in Schedule III, the conversion of the existing dwelling to a Class F Boarding License (Cooperative Sober Living Residence) is not permitted as a principal use in the R-2 Single-Family Residential (R-2) zone. The applicant requires d(1) type use variance for a use not permitted.

The stated purpose of the R-2 zoning district in the Land Use Ordinances is to "(p)rovide for detached dwellings at areas in the City where this type of housing has traditionally prevailed and developed." There is no stated purpose or intent for the R-2 zoning district in either the Master Plan / Master Plan Re-examination Report(s). Permitted uses in this zoning district include detached single-family dwellings, rectories, and home occupations. The proposed use is not permitted in the R-2 zoning district. Boarding and rooming houses are listed as a permitted use in the RM-4, RS, and the RMC zoning districts. These structures are a conditionally permitted use in the RS-C zoning district.

The site is in a developed and mature residential neighborhood of typically larger dwelling units. Surrounding uses include primarily detached single-family dwelling units. The Zoning Board must weigh the permitted use, the goals of the Master Plan, and the proposed development itself to determine if the proposed use is appropriate in this location.

Pursuant to § NJSA 40:55D-70, no variance can be granted without showing that the variance or other relief can be granted without impairing the intent and purpose of the City's zone plan and zoning ordinances. In this case, the applicant must demonstrate to the Board that the use of the existing dwelling for a Class F Boarding Home – Clean and Sober Living Residence will not affect the municipality's desire to provide single-family detached dwelling units in this zone.

Applicant's Burden of Proof – The applicant requests that the Board grant deviation from the requirements pursuant to § NJSA 40:55D-70(d). The applicant must provide testimony in support of the purposes of zoning or positive criteria, as contained in § NJSA 40:55D-2. The applicant must also provide testimony as to why the site cannot be reasonably adapted to a permitted use in the R-2 zoning district.

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The Zoning Board may not grant a use variance without showing that the variance can be granted without substantial detriment to the public good, that the site is particularly suited for the proposed use, and that the granting of the use variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The applicant will be required to provide this information to the Board for consideration. Testimony relating to any negative criteria must also be presented during the Board meeting.

The Board must balance the purposes of zoning that will be provided by the applicant versus the negative impacts that will be created when deliberating the relief that has been requested. Should the Board feel that the applicant has demonstrated that purposes of zoning were satisfied, the negative impacts have been addressed, that the site is particularly suited to the proposed development, and that there will not be a significant impairment of the Zone Plan or Zoning Ordinance, then the applicant has provided the burden of proof necessary to allow for granting of the use variance.

<u>Bulk and/ or Variance Relief</u> – The variances associated with the existing non-conforming conditions will require deviation from the requirements pursuant to § NJSA 40:55D-70 c. In requesting c type variance relief, the applicant must demonstrate both the purposes of zoning and negative criteria that will result from deviation from the Zoning Ordinance for each of the requested variances.

If the variances are presented under "hardship" or c (1) variance relief found in § NJSA 40:55 D-70 (c) (1), the applicant must demonstrate that there is an exceptional narrowness, shallowness, or the shape of the property, or by reason exceptional topographic conditions or physical features uniquely affecting the property and that the strict application of the zoning regulations would result in a peculiar and exceptional practical difficulty to, or exceptional and undue hardship on the applicant. In the alternative if variances are presented under the "flexible" or c (2) variance relief found in § NJSA 40:55D-70 (c) (2), the applicant must demonstrate that one (1) or more of the purposes of zoning are met, that the variances can be granted without substantial detriment to the public good, and finally, will not impair the intent and purpose of the zone plan ordinance. The required variances are listed below:

#### Variance Relief Required:

• § 163-55 D	Minimum Required Front Yard Setback
• § 163-55 D	Minimum Required Individual Side Yard Setback
• § 163-55 D	Minimum Required Rear Yard Setback
• § 163-55 D	Maximum Permitted Lot Coverage for a Principal Building
• § 163-55 D	Maximum Permitted Total (Aggregate) Lot Coverage

# Variance Comments:

1. In accordance with the provisions contained in § 163-55 D, the minimum required front yard setback for a lot located in the R-2 zoning district is fifteen feet (15'). The existing dwelling has a front yard setback of just over five feet (5.3'). This is an existing non-conforming setback that will not be exacerbated or increased by the proposed development.

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- 2. In accordance with the provisions contained in § 163-55 D, the minimum side yard setbacks for a detached single-family dwelling in the R-2 zoning district is five feet (5') on one side and twelve feet (12') on the second side. The existing dwelling has a setback of approximately just under four feet (3.5') to the northern property line − to the existing overhang and garage. This is an existing non-conforming setback that will not be exacerbated or increased by the proposed development.
- 3. In accordance with the provisions contained in § 163-55 D, the minimum required rear yard setback for a lot located in the R-2 zoning district is twenty-five feet (25'). The existing dwelling is located at a setback of three feet (3') from the rear property line to the attached wooden deck and the frame garage. This is an existing non-conforming setback that will not be exacerbated or increased by the proposed development.
- 4. In accordance with the provisions contained in § 163-55 D, the maximum permitted lot coverage for a principal building is density for a detached single-family dwelling in the R-2 zoning district is thirty-five percent (35%). The existing site has a lot coverage for a principal building that appears to exceed thirty-five percent (35%). This is an existing non-conforming setback that will not be exacerbated or increased by the proposed development.
- 5. In accordance with the provisions contained in § 163-55 D, the maximum permitted total or aggregate lot coverage for a for a lot located in the R-2 zoning district is forty percent (40%). The existing site has a total or aggregate lot coverage that appears to exceed forty percent (40%). This is an existing non-conforming setback that will not be exacerbated or increased by the proposed development.

# General Review Comments:

- 1. The original application filed with the Board on January 27, 2021 includes a cover letter that indicates that the applicant is seeking to appeal the decision of the Zoning Officer, an interpretation, and a use variance. Please note that page four (4) of the application has only checked that the applicant is seeking an appeal of the decision of the Zoning Officer and an interpretation.
  - The supplemental application filed on February 22, 2021 only includes a checkmark on the line indicating that the applicant is seeking a use variance relief only and does not include the appeal of the Zoning Officer or the interpretation. The applicant should provide clarification regarding this discrepancy and address the same as part of any testimony offered in support of the application.
- 2. The applicant's characterization of the July 19, 2019 denial of the Zoning Permit is inaccurate. This office denied the application because certain critical information was not included and missing. The second submission of an application for a Zoning Permit in December 2020 was also missing this same exact information. No Survey or Architectural floor plans were submitted to the City for review until the application package was filed with the Board for consideration. The Zoning Official(s) did not have the benefit of the additional information that has been provided to the Board even though it has been repeatedly requested.
- 3. The applicant has indicated that they are seeking an interpretation. The applicant has not specified the section from the Ordinance that they are seeking an interpretation from. This office cannot provide any comments relating to the requested interpretation without this information.

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- 4. No information has been provided with regard to certain bulk and area standards including: the height of the existing building height, height of the accessory structure (garage), the lot coverage for an accessory building (garage), and the number of existing off-street parking spaces. This office cannot determine if the improvements meet the zoning requirements. These items may require additional variance relief for existing non-conforming conditions. This information has been previously requested. The applicant's professionals should provide this information to the Board as part of the application.
- 5. This office has repeatedly sought information as to the exact nature of the proposed operation. Based on Hansen House's licensure as a Cooperative Sober Living Residences, please confirm if the specific use of the property will be as a "Class F Rooming House" and that the number of residents living at the property will be capped at 10, exclusive of the owner and/or operator.
- 6. The appears to be a discrepancy in the number of bedrooms and potential residents filed in the various applications. The original application for a zoning permit filed with the City in 2019 indicates that the structure is a "7 BR home with fourteen residents." The second application for a zoning permit filed with the City in December 2020 indicates that the structure is a "single family home, 7 bedrooms ... this will be a 7 bedroom home with 14 residents. See attached letter from Keith Davis on 7/10/29 to Anthony Cox." The application filed with the Zoning Board does not specify the present use of the property. The revised application filed with the Zoning Board in February 2021 indicates that the existing use is a "single-family home, 9 bedrooms." Please note that the architectural plans appear to include only seven (7) bedrooms.
- 7. The Planning Offices have repeatedly requested information as is relates to the specific size of the rooms. This information has not been provided during this nearly two (2) year period. It is impossible to determine the maximum permitted occupancy of the bedrooms or structure without this information. Due to the ceilings of the bedrooms in the upper level being peaked (sloped), pursuant to the Uniform Construction Code ("UCC"), the habitable space in the bedrooms is measured at five feet (5") above the finished floor. The plans submitted measure the habitable space at seven feet (7") above the finished floor for the upper floors. Since the ceilings are sloped, the habitable space of the bedrooms on the upper level of the structure will be different once the correct measurements are provided. Please provide updated measurements of the habitable space for the bedrooms on the upper level measured at five feet (5") above the finished floor so that the Zoning Board can determine the number of individuals that can safely occupy the structure

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8. The application includes documentation that the applicant has received a "Class F Boarding License" issued by the New Jersey Department of Community Affairs (NJDCA) for this site. Please note that paragraph two (2) on page two (2) of the October 31, 2019 letter from the NJDCA issued by Bernard A. Raywood, Chief of the Bureau of Rooming and Board House Standards, contains very specific language.

"A Class A Rooming House licensed to allow occupancy of up to ten (10) residents do not operate as a single housekeeping unit."

In Mr. Davis's July 2, 2021 correspondence at the second page from the end (labeled as "page 9") also includes very specific language. The highlighted language indicates that a Cooperative Sober Living Residence is a New Class of Rooming House. It further states that "(a) CSLR is a change in the character of use of a single-family dwelling..." in two (2) separate locations.

This language indicates that the proposed operation is not considered as a single housekeeping unit. It is more akin to a rooming house. Further, the NJDCA indicates that the ten (10) residents do not operate or function as a single housekeeping unit. It further indicates that the use of an existing single-family dwelling for a Clean and Sober Living Residence represents a change in the character of the single-family dwelling.

9. Mr. Davis's December 23, 2020 correspondence to the City's Zoning Official indicates that the City "has historically designated such a use as a "community residence" under ∫ 152-1 of the Municipal Ordinance." Please note that this is not an entirely accurate representation. This office has never referred to the application/ proposed use as such. (This is language utilized by the applicant and their professionals in meetings with the City.) Additionally, there is no definition for a "community residence" in Chapter 163 – the Zoning Ordinance for the City. The term "community residence" is referred to in Chapter 152, which is not contained within the Zoning Ordinances.

The original denial for the Zoning Permit was due to a lack of information on July 19, 2019 and affirmed a second time on July 31, 2019 when no further information was submitted. Finally, the City's Zoning Official denied the application a third time on January 8, 2021, again for a lack of information.

- 10. This office is concerned with the number of off-street parking spaces that are or may be required for the proposed use.
- 11. This office will defer all site grading and drainage issues to the Board Engineer's office for comment.
- 12. A copy of any existing or proposed covenants, deed restrictions, or exceptions that apply to this site must be submitted to the Board Attorney for review, or the plans should be modified to include a note indicating that none of these conditions exist.
- 13. All proposed lot numbers should be reviewed by the City's Tax Assessor. Documentation as to the new approved lot numbers, street addresses, and/ or unit numbering should be provided to the City's professionals for review.
- 14. All application and escrow fees must be paid and a certification demonstrating evidence must be obtained by the applicant or their professionals and provided to the City.

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- 15. As a condition of any approval that might be granted by this Board, the applicant will be required to provide a cost estimate and performance guarantees to the City Engineer for review and approval. This will include any improvements located within the municipal right-of-way and any other site improvements including parking areas, landscaping, fencing, and lighting.
- 16. As a condition of any approval that might be granted by this Board, all plans submitted to the Board must be revised to include the comments contained in the Planning and Engineering review letters.
- 17. As a condition of any approval that might be granted by this Board, the applicant or their professionals must obtain a certification for the City Tax Assessor's Office certifying that no taxes or assessments are due or delinquent on the subject property.
- 18. As a condition of any approval that might be granted by this Board, the applicant is required to obtain approvals and / or permits from all other State and local agencies that <u>may</u> have jurisdiction over the project including, but not limited to:

•	Atlantic City Water Company
•	Atlantic City Sewerage Authority
•	Atlantic City Board of Health
•	Atlantic County Health Departmen

Atlantic County Health Department
 Atlantic County Planning Board

Cape-Atlantic Soils Conservation District

New Jersey Department of Environmental Protection (NJDEP)

• New Jersey Department of Transportation (NJDOT)